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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 31st MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Tuesday, 25 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mr. CHERNICHENKO

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* The summary record of the second (public) and third (closed) parts of the meeting appear as document E/CN.4/Sub.2/1992/SR.31/Add.1 and Add.2 respectively.

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The meeting was called to order at 3.15 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1992/4, 5, 6, 7 and Add.1, 8, 9 and Add.1 and 10; E/CN.4/Sub.2/1992/NGO/8, 9, 10 and 18; E/CN.4/Sub.2/1991/55; E/CN.4/1990/56; E/1992/67; A/47/289)

1. Mrs. KSENTINI said that she wished to comment on the second progress report submitted by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1992/8). She hoped that in his future reports the Special Rapporteur would devote more attention to the question of the compensation to be accorded, not merely to individuals, but also to oppressed peoples who had been the victims of racism, exploitation and colonial or foreign domination, or whose natural resources had been plundered. In that regard, she supported the remarks made by Mrs. Mbonu regarding victims of slavery in Africa.

2. She drew the Special Rapporteur's attention to the two specific recommendations made by the Working Group on Contemporary Forms of Slavery in its report (E/CN.4/Sub.2/1992/34) with regard to the possibility of reparation and compensation, the first in the context of the persistence of slavery-like practices (para. 118), the second requesting the Special Rapporteur to make recommendations in connection with contemporary forms of slavery and to take into account the need for moral compensation for victims of the slave trade and other early forms of slavery (p. 24).

3. She also invited the Special Rapporteur to take note of various recent developments at national level. In many developing countries that had been victims of colonial domination, associations were being formed to assert the right to moral and other compensation. In Algeria, an "8 May 1945 Foundation" had been formed, with the objective of breaking the conspiracy of silence surrounding war crimes and crimes against humanity committed in the colonial era. Its aims included assessment of the material and moral damage inflicted, and of appropriate compensation. It also sought to have crimes committed in such circumstances recognized as crimes against humanity which were not subject to any statute of limitations.

4. Mr. KOVEN (World Press Freedom Committee) said that the groups his organization represented were not lawyers' groups or general human rights organizations that felt constrained to weigh the relative values of different freedoms, but journalistic practitioners who knew from bitter experience that freedom of expression and its main channel, freedom of the press, were essential to the exercise of all other liberties. The final report by Mr. Türk and Mr. Joinet on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9) leant heavily on permissible restrictions listed in the International Covenant on Civil and Political Rights. The opportunities it offered to would-be press restricters were so obvious that the Special Rapporteurs themselves repeatedly stressed the dangers of abuse inherent in those broad and ambiguous categories. For example, they stated that, in view of the vagueness of the idea of public order, there was a great temptation to

invoke it in irrelevant circumstances. They spoke of the germ of a moral dictatorship that could be justified by the Covenant. They stated that the use of loose concepts and excessively broad or catch-all formulations might give the State unduly large discretionary powers, thereby opening the door to violations of human rights. Yet, oddly enough, in their conclusions they failed to heed their own warnings, instead introducing four new broad and fuzzy criteria according to which restrictions on freedom of expression might in their view be justified, namely: legitimacy, legality, proportionality and democratic necessity. There was a well-known adage that patriotism was the last refuge of a scoundrel. Would the world now see a new refuge in the notion of "democratic necessity"?

5. It was precisely because of the dangers inherent in the ambiguities of the Covenant that, when the United States of America had finally ratified that text in the spring of 1992, after many years of richly justified hesitation, the Government had entered a reservation on the restrictions it permitted to freedom of expression. Other countries had entered similar reservations. Yet none of those reservations was mentioned by the Special Rapporteurs. With the end of the cold war and the new ground gained by democracy, it should now be obvious that the kinds of restrictions contained in the Covenant had been the fruit of compromise with authoritarian regimes. Dissidents like Solzhenitsyn, Sakharov, Havel and Walesa had been silenced in the name of concepts like public order, national security and democratic necessity. The Commission on Human Rights should now be working to negate such unworthy compromises, not to enshrine their new use in the greatest era of democratic advance since 1848. He had the utmost respect for the intellects and probity of the Special Rapporteurs. But they needed to break away from the traditional world view which he had characterized in earlier debates in the Sub-Commission as "the rage to codify", which led them to try to establish a hierarchy of rights. To them, freedom of opinion was absolute, but freedom of expression was relative. In other words, one should not be subjected to the action of the Holy Inquisition on account of one's views; but in certain circumstances it was conceivable and it could be legitimate to silence criticisms of the activities or of the office of the Grand Inquisitor. That might seem like a caricature of the authors' intentions; but not everyone who followed their reasoning could be counted on to be motivated by the same democratic good intentions. He did not think he was caricaturing the potential effects of their conclusions.

6. While nothing in practice could be perfect or absolute except an ideal, one could not hope to approximate to perfection unless one set such ideals. The Special Rapporteurs stated that it was essential to develop the view that States had a positive obligation to ensure respect for the right to freedom of expression. For that very reason, his organization and its associated groups had drawn up a 10-point Charter for a Free Press that enjoined Governments to refrain from such practices as censorship, control of news media, discrimination against independent media, restriction of access to the means of dissemination, restrictive visa practices against news gatherers, and licensing or other restrictions on the practice of journalism. Copies of the Charter were available to participants in French and English.

7. Echoing the terms of article 19 of the Universal Declaration of Human Rights, the Charter stated that its principles of unfettered flow of news and information both within and across national borders deserved the support of all those pledged to advance and protect democratic institutions. The Sub-Commission should adopt that positive and constructive approach, rather than enumerating permissible restrictions on freedom of speech and press freedom. It should surely seek to enlarge the sphere of freedom rather than to define its limits.

8. The tenth and concluding point of the Charter for a Free Press stated: "Journalists, like all citizens, must be secure in their persons and be given full protection of law." That was why his organization supported the recommendation by Mr. Türk and Mr. Joinet that a special rapporteur should be appointed, or some other appropriate mechanism established, to spotlight the growing number of deliberate threats to the security of journalists working to inform society. But his organization could not in conscience approve of the authors' call for a new cataloguing of admissible restrictions on freedom of expression and of the press. Neither the Sub-Commission nor its parent body should embark on such a dangerous undertaking. As the Special Rapporteurs themselves wisely said, history taught that restrictions had an unfortunate tendency to spread beyond the limits within which they had originally been conceived. That, he submitted, should have been the conclusion of their exercise. If that exercise had been a purely academic one, with no practical consequences, it had no place in that forum. If it was intended to have practical application, the potential for misapplication was truly alarming.

9. Mr. Chernichenko took the Chair.

10. Ms. MARKS (Women's International League for Peace and Freedom), speaking also on behalf of Habitat International Coalition, the International Union of Students, the World Student Christian Federation and the World Young Women's Christian Association, spoke of the discrimination against lesbians and gay men in all parts of the world, which ranged from jokes at their expense to State-sanctioned violence and even killings. Reliable statistics suggested that that group made up at least 5 to 10 per cent of the population of all cultures at any one time, their invisibility in many societies being indicative of discrimination. Many lesbians and gay men had good reason to fear that their human rights would be violated if their sexual orientation or preference was known.

11. Lesbians and gay men were consistently subject to arbitrary arrest and detention on grounds of their sexuality, in violation of article 9 of the Universal Declaration of Human Rights. In Argentina, where homosexuality was not a crime, arrests were made on fabricated charges. In China people were arrested because they were homosexual, but were never subsequently charged.

12. Such acts also violated article 3 of the Universal Declaration, as in cases where lesbians or gay men were murdered because of their sexual orientation. On 12 July 1992, the bound and strangled bodies of at least five gay men, including Dr. Francisco Estrada Valle, a well-known AIDS activist, had been found in Mexico city. Although the Mexican authorities had not been implicated in those crimes, they had been accused of not investigating them fully because they involved gay people. Sometimes, however, government agents

were directly involved in such crimes, as was the case in Colombia, where one Medellín-based group, Grupo de Ambiente, had documented 328 murders of gays by death squads between 1986 and 1990. Several human rights organizations, including Amnesty International, had accused the Colombian armed forces of responsibility for, or at least complicity in, those death-squad killings.

13. Governments also violated article 13 of the Universal Declaration when they established discriminatory immigration laws excluding foreigners who were lesbian or gay, or refusing to recognize lesbian or gay relationships for purposes of sponsorship of partners who were foreign nationals. The rejection by the United Kingdom authorities in 1989 of an application for asylum by a gay man from Cyprus who feared persecution in his own country on the grounds of his membership of a particular social group, constituted a violation of article 14 of the Universal Declaration. Her organization could provide experts with further examples of violations of the human rights of lesbians and gay men throughout the world.

14. In paragraph 185 of his final report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1992/16), the Special Rapporteur, Mr. Türk, drew attention to the need to "devote increased attention to areas of discriminatory behaviour generally ignored at the international level, in particular ... with regard to ... sexual orientation". The credibility of any organization working for universal rights was called into question when it failed to stand up for the rights of any one group, however unpopular. Justifying the exclusion of a group was the first step towards justifying the exclusion of every group other than the dominant group. She urged members of the Sub-Commission, observer Governments, intergovernmental and non-governmental organizations to include in their work the issue of ending violations of the human rights of lesbians and gay men.

15. Ms. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees) wished to draw the Special Rapporteur's attention to certain factors which should be taken into consideration in the preparation of his final report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, and in the drafting of basic principles and guidelines on that question.

16. As the Special Rapporteur rightly pointed out, it was essential that any study of that right should address the issue of impunity. While it was true that impunity made it difficult for the victims or their families to obtain just and adequate reparation, it also itself constituted a failure to provide reparation, since, in the absence of a trial of those responsible for the disappearance, the whereabouts of the missing person could not be established. An extreme example was the case of the detentions in Colombia, on 9 September 1977, of Omaira Montoya Henao and Mauricio Trujillo, who had been detained by the secret F-2 unit of the National Police. Omaira Henao had not been seen since. According to a statement made subsequently by Mauricio Trujillo before a military judge. Lieutenant Colonel Jaime Ramírez Gómez and Captain Alvaro Blanco Noriega had taken part in the operation, and the former had been present when the two detainees were tortured. When the case subsequently went for trial, Lieutenant Colonel Gómez and Captain Noriega were appointed Judge of First Instance and Prosecutor respectively. As was to be expected, the defendants were subsequently acquitted, and the court of first instance ordered the case to be filed.

17. But the families were also direct victims in such cases. Impunity prevented families from learning the truth, thus preventing them from obtaining restitution. The general principle of law applicable was restitution in kind or, failing that, equivalent compensation. The right of access to the truth was thus a reparation and restitution necessary for families of missing detainees.

18. Of course, access to the truth and punishment of those responsible did not constitute full restitution. Reparation must also be made for the moral and material harm caused to the victims, in the form of equivalent compensation. But that compensation could not, or should not, be a substitute for restitution in kind. Thus, in Argentina for example, Act 24043 of January 1992 established, with certain restrictions, the right of certain victims of gross violations of human rights to compensation. But, in parallel, Acts 23221 and 23492, and pardons granted by the President of the Republic, guaranteed impunity for those responsible for those gross violations. In such cases, compensation was a substitute for, and not a complement to, restitution. Reparation in such cases was partial, not total.

19. Likewise, in Chile, the Comisión Nacional de Verdad y Reconciliación had recommended a range of measures including symbolical reparation to victims, statutory and administrative measures to resolve the legal position of spouses and legal representation of their children, and economic reparation, including psychological and medical assistance and aid for the education of victims' children. Yet Act 19123 of 31 January 1992, which established the Corporación Nacional de Reparación y Reconciliación, referred only to economic compensation.

20. Her organization stressed that compensation, as reparation by equivalent means, could not replace reparation in full. That view was supported by the Inter-American Court of Human Rights, which had stated that reparation consisted of reparation in full (restitutio integrum), which included restoration of the situation that had obtained previously, reparation for the consequences of the violation and compensation for material and other damage.

21. Normally, the term "rehabilitation" was taken to refer to medical assistance to victims. Without prejudice to that interpretation, her organization considered that the concept of rehabilitation should be much broader in scope. In many cases, the social stigma that attached to the victims of detention persisted after they had been freed. The reasoning tended to be: "They must have done something to deserve it". Rehabilitation must also include moral rehabilitation of the victim in society.

22. Mr. McDONALD (International Human Rights Internship Program), speaking on behalf of the Minnesota Lawyers Human Rights Committee, stressed the link between human rights concerns and environmental concerns, a link that had been addressed in a number of reports submitted to the Sub-Commission at the present session. His organization welcomed the progress report on the subject submitted by Mrs. Ksentini (E/CN.4/Sub.2/1992/7 and Add.1) and commended the emphasis it placed on the right of individuals and communities to environmental information, and on their right to participate in governmental decisions affecting the environment. His organization wished to see a more workable definition of the concept of the right to the environment, and of the content

of that right. It also wished to see effective implementation procedures to protect the rights of environmental victims. Efforts should be made to study the appropriateness of existing human rights mechanisms and institutions as a means of implementing a right to a healthy environment. Other means of implementing such a right should also be examined.

23. His organization commended Mrs. Ksentini for her participation in the United Nations Conference on Environment and Development in Rio de Janeiro and her discussions with NGOs at the forum on human rights and the environment. It feared, however, that without continuing participation by the Commission on Human Rights and the Sub-Commission, human rights concerns might not receive sufficient attention in future implementation of the principles that had emerged from the Conference. Representatives of human rights institutions must participate actively in the establishment of the new Commission on Sustainable Development. Meanwhile, in her final report, the Special Rapporteur might consider recommending the appointment of a thematic rapporteur or working group on human rights and the environment to study the interrelationships of those two issues. Such a procedure could also pay particular attention to the related issues of the right to development and the rights of indigenous peoples.

24. Ms. ACTIS (American Association of Jurists) began by referring to the question of human rights and the environment. Since 1960, forested areas in Central America had been reduced from 60 to 30 per cent of the total territory, and deforestation was proceeeding at an annual rate of 1.5 per cent, with serious environmental consequences such as shortages of water for irrigation and domestic consumption. That deforestation was the result, partly of a process of so-called modernization, and partly of strategies for survival. Modernization had taken the form of indiscriminate felling of trees for sale as lumber, opening up agricultural land for stock raising (the so-called "hamburger connection"), for production of coffee and cotton for export, and for mining operations.

25. The social consequences had included the displacement of poor peasants and indigenous peoples who were now engaged in strategies for survival, cutting down trees for use as fuel or to sell as timber. Their attempts to resist the plundering of their lands were met with repression and slaughter. The World Bank and the Inter-American Development Bank financed those processes of modernization, the result of which was concentration of ownership into the hands of the few, enrichment of the local elites, including military chiefs, enormous profits for transnational corporations, and impoverishment and deteriorating living conditions for large sectors of the population, in a framework of ever more rapid deterioration of the environment.

26. A similar situation obtained in Africa, where famines, at first sight attributable to climatic conditions and wars, proved on more careful analysis to be the result of European colonization, that had devastated enormous tracts of forests in order to plunder their timber and promote export crops such as coffee, cocoa and groundnuts. Subsistence crops had been marginalized and traditional agricultural techniques designed to weather periods of drought had been abandoned. The situation was the same in Asia, where Nepal, for example, had the highest rate of deforestation in the world. Various documents published by the United Nations Research Institute for Social Development (UNRISD) cast valuable light on those situations.

27. In some respects, the problems of the eastern European nations were comparable to those of the developing countries. Since the collapse of the former regime in Poland, many west European enterprises were exporting industrial waste to Poland, selling polluting products and relocating problem industries on Polish territory.

28. Developing societies were not intending to follow the trail blazed by the developed countries. The destruction of natural resources and deterioration of the environment could be combated only by creating a society compatible with its environment, not by ad hoc measures. No policy intended to preserve the ecosystem or reduce consumption of natural resources could be effective on a world scale until such time as every human being had achieved an acceptable standard of living. The 1974 Latin American Model had stressed the need for participation by all in all social decisions. The concept of development as the full realization of individual human potential could not flourish in the absence of democracy, political rights and genuine popular participation.

29. It would be difficult not to agree with the conclusions and recommendations of the report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9) but her organization was concerned by their failure to address the monopolistic concentration of the informational media which made it possible to manipulate public opinion worldwide not only in political and economic matters but also in terms of consumption habits and lifestyles which could destroy national cultures. Article 3, paragraph 3, of the American Convention on Human Rights touched on that problem which had been the subject of a number of studies, notably the 1976 work of Professor Tapio Varis on the influence of transnational corporations on information. In February 1992 Le Monde Diplomatique had published a collection of papers on the issue under the title "Medias, mensonges et democratie".

30. Her organization believed that the Sub-Commission should prepare a study on the predominant role played by the mass media in the expression and dissemination of ideas in contemporary society and consider the creation of instruments which would prevent their monopolization and ensure their democratic control.

31. The issue covered by the report of Mr. Varela Quiros (E/CN.4/Sub.2/1992/10) was part of a wider problem which would include discrimination against other categories of sick persons and the question of limiting the right to privacy of the human person in terms for example of medical controls connected with work, limits on the power of the judiciary to order compulsory blood tests in order to establish for example the identity of the author of a crime or alcohol levels. On the issue of compulsory blood tests, the legislation in different countries reflected different standards and could have important consequences. For example, on 13 November 1990, in a case involving a suit by the putative grandparents of a child believed to have been the child of a couple who had disappeared during the military dictatorship, the Supreme Court of Argentina had decided, by seven votes to two, that a compulsory blood test could not be performed because of the opposition of the adoptive father and because such a test represented a threat to the physical integrity of the child. The dissenting judges were of the opinion that the law gave primacy to the right of the minor to ascertain his own identity over what was involved in taking a compulsory blood sample. The mandate of Mr. Varela Quiros should be expanded to cover those aspects.

32. Ms. LEAS (Human Rights Advocates) said that her organiz ion had prepared a report (E/CN.4/Sub.2/1992/NGO/10) which documented circumstances around the world where human rights violations were occurring due to environmental degradation caused by the depletion of natural resources, man-made environmental disasters, and poorly planned development projects. For example, the Narmada River Valley project of the Indian Government, supported by the World Bank, was likely to displace over 1 million people, most of whom would not be adequately compensated, resettled or provided with a sustainable livelihood. Mismanagement of natural resources, including oil, minerals, water and forests had led to severe watershed erosion, desertification, and atmospheric pollution in many areas of the world, with serious impacts on human life. Oil production in the Ecuadorian Amazon had wreaked havoc on vast areas of primary tropical rainforest, causing serious deterioration of the food supplies and health of the indigenous people. Of special concern was the fact that local people were often excluded and their concerns ignored in government planning of projects that impacted the environment.

33. She wished to draw special attention to the issue of environmental refugees, namely, people who had been forcibly displaced or who had migrated within and across borders because of development projects, environmental disasters or desertification and drought. The majority of mankind continued to rely intimately upon local natural resources for sustenance, shelter, livelihood and culture. Environmental destruction caused by unsustainable land use practices forced millions to mig.ate each year. Her organization estimated that, by the end of the century, the number of environmental refugees would exceed 100 million worldwide. Environmental migration was also fuelled by spiralling population growth most of which occurred in poverty-stricken areas where land had already been marginalized. The resettlement of those migrants would place additional burdens on the resources within the areas of refuge, thereby perpetuating the cycle of natural resource destruction and migration.

34. The environmental refugee problem had reached crisis proportions and was likely to deepen further because the victims were not protected by international law and were ineligible to receive humanitarian assistance under traditional refugee programmes. Many international agencies were uncertain as to their authority to address population movements that had been induced by environmental problems because, traditionally, Governments and international agencies had treated environmental problems separately from migration problems. Persons fleeing environmental disasters enjoyed no international status or assistance.

35. The report of the Special Rapporteur (E/CN.4/Sub.2/1992/7) was an important step towards developing greater understanding of existing human rights law upon which international institutions could base efforts to address the suffering of environmental refugees. Her organization therefore urged the Special Rapporteur to address those issues specifically in her report to the Sub-Commission the following year. She should be provided with the necessary resources for the additional work involved in compiling and reviewing the vast amount of information available. In her final report she might specify which United Nations human rights bodies should be responsible for clarifying human rights doctrine to protect environmental victims and identify possible standards for their consideration.

36. In conclusion, Human Rights Advocates suggested that the Sub-Commission should recommend that the Commission on Human Rights should facilitate the drafting and adoption of an international convention or protocol that would embody international standards for the prevention of human rights abuses associated with environmental harm and that such an instrument should specify procedures for remedying environmental human rights abuses.

37. Mr. FORSTER (Minority Rights Group) considered that the state of the environment and the human rights of small and vulnerable minorities were closely related. The International Year for the World's Indigenous People in 1993 would provide an extra focus for concern on the issue.

38. Minority Rights Group proposed to comment on the situations of three specific indigenous peoples; each of those peoples had a different culture, environment and way of life but the common thread was that each continued to be threatened by environmental catastrophe.

39. The testing, storing and disposal of long-range missiles and weapons of mass destruction had made the Pacific one of the most militarized areas of the world. Minority Rights Group had welcomed the announcement by the French Government of a moratorium on nuclear testing in the Pacific and urged the French Government to make the moratorium permanent. It also welcomed the decision by the United States Government not to proceed with the destruction of toxic wastes and chemical weapons incineration at Johnson Atoll. Despite positive moves by Governments there was still grave cause for concern in the Pacific. The costs of past nuclear testing - whether by the United States, the United Kingdom or France - were still being paid by the Pacific Islanders of Micronesia and French Polynesia in terms of health, habitat and lifestyle.

40. The Adivasis were the tribal peoples who lived in the forests and plains of Bangladesh. Over the past 30 years, over half of the vast Madhupur Forest had been destroyed and the Mandi Adivasis evicted by settlers, despite the fact that the Mandi had been resident in the forest for several hundred years. The greatest single threat to tribal land holdings was the continuing establishment of rubber plantations from 1986 to the present. Some international donors had provided funding for those activities without proper regard for the situation of the Adivasis. The Adivasis were Bangladeshi citizens and suffered no disability under law but the previous military Government and certain major banks had failed to protect their environment and livelihood. Minority Rights Group hoped that a democratic Government would address those problems and ensure that projects in the future would not be carried out without the full and informed consent of the Adivasis and others concerned.

41. The "small peoples of the North", the 26 indigenous groups which inhabited the vast region from the Finnish border to the eastern seaboard of the Russian Federation were also struggling to survive in an environment which had been contaminated by industrial development, including factories, mines, oil and gas extraction and logging. Land and rivers had been poisoned and polluted, traditional native livelihoods built around hunting and fishing had been destroyed. Totalitarian communism had resulted in the resettlement of whole communities from their traditional lands to inappropriate sites. The boarding

school system whereby children spent many years educated away from their parents and communities had meant that many of the traditional survival skills, essential in the harsh environment of the north, were being lost. The new non-Communist Government of the Russian Federation had recognized some of the damage done by past policies and had indicated that attempts would be made to rectify mistakes and possibly reverse certain policies.

42. The Governments of France, Bangladesh and Russia had all taken positive steps which could improve the situation of Pacific Islanders, Adivasis and the small peoples of the north. Those first steps must be turned into coherent long-term programmes to preserve, protect and restore the environment, if human rights were to be protected. Legal rights and sanctions must be backed by State support. The issues of full information on past abuses and compensation for life, resources and lost livelihoods must be addressed. All of those Governments would aid their credibility by allowing free and unfettered access to those areas by non-governmental organizations and by entering into constructive dialogue with the peoples concerned and with NGOs. Above all, they must listen carefully to the voices of the indigenous peoples themselves with a view to ensuring the full enjoyment of their human rights.

43. Ms. MENICI (International League for the Rights and the Liberation of Peoples) welcomed the inclusion of the issue of impunity in Mr. van Boven's study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1992/8). Impunity had been widely recognized to be among the major obstacles to the effective implementation of that right.

44. Many legal and extralegal devices had been employed to prevent victims from having access to the courts or from obtaining needed proof. The Special Rapporteur might consider giving further consideration to such devices and propose appropriate rules or principles.

45. Her organization believed that the right to reparation for victims of gross violations of human rights in no way exonerated the State from its obligation to investigate the facts and bring to justice and punish persons found to be responsible. Those elements should be part of the reparation.

46. In a number of countries grave violations of human rights were frequently accompanied by stigmatization of the victim, as in the case of Graciela Daleo in Argentina who, after many years as a disappeared detainee, was accused of a crime which she had not committed. When human rights were violated in such a way that society itself was harmed, reparation for such crimes should go beyond the purely personal aspect. The Colombian Section of the International League for the Rights and the Liberation of Peoples had submitted a proposal to the Colombian authorities for the suppression of impunity, pointing out that in cases involving gross violations of human rights such as political assassination, forced disappearances and torture, reparation must include the public stigmatization of the State crime in order to make the public aware that human rights could be exercised without the risk of victimization and to re-establish confidence in justice.

47. In conclusion, her organization agreed with Mr. van Boven that in any social and political climate where impunity prevailed, the right to reparation for victims of gross violations of human rights and fundamental freedoms was likely to become illusory.

48. Ms. SCHREIBER (International Abolitionist Federation) said that the principle of the right to compensation and indemnification for damages caused by gross violations of human rights was to be found in the majority of international human rights instruments, some of which also provided for the establishment of monitoring bodies to ensure the effective implementation of the provisions of those instruments.

49. The International Covenant on Civil and Political Rights, in article 2, paragraph 3 (a), provided that each State party undertook to ensure that any person whose rights or freedoms had been violated should have an effective remedy, notwithstanding that the violation had been committed by persons acting in an official capacity; article 2 in paragraph 3 (b) also undertook to ensure that the competent authorities would enforce such remedies when granted. Article 8 of the Covenant prohibited slavery and the slave trade in all their forms.

50. In the latter connection, she recalled the physical and mental suffering of Korean girls forced into prostitution by the military authorities of Japan during the Second World War, of those in current organized prostitution in military bases and in the traffic in thousands of women and children for purposes of prostitution and pornography. In that connection she also wished to refer to the recommendation of the Working Group on Contemporary Forms of Slavery which had formally declared that slavery in all its forms represented a crime against humanity and should be punished as such. The Working Group had included in its agenda for 1993 a study of measures for the rehabilitation and protection of such victims including the possibility of a United Nations voluntary fund which would provide humanitarian, legal and financial assistance to persons whose rights had been gravely violated. In addition, the International Law Commission was preparing a code of crimes against peace and humanity; such crimes should categorize slavery and forced labour as a crime against humanity.

51. The issue of compensation for human rights violations was complex because: the machinery and procedures for the purpose had not yet been established; as the Special Rapporteur had pointed out, very little attention was paid to the question of compensation for victims because the issue was frequently regarded as a nuisance or unimportant, while the view of the victim was often overlooked; and because of the question of impunity. In the latter connection, Mr. van Boven had pointed out that the obvious link between impunity and the fact that victims were not ensured fair and equitable compensation must not be overlooked.

52. On the issue of impunity, the question arose as to whether the approach should be declaratory, one of standard setting or the establishment of an international criminal jurisdiction established for the purpose. In the latter connection, some members of the International Law Commission had expressed the opinion that such a court would represent a further step forward in the development of international law and a code of crimes against humanity. She

would suggest that Mr. van Boven might give further consideration to the findings of the Maastricht Conference on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, held in March 1992. The way might then be open as a first step towards the establishment of an international commission on the right to restitution and compensation for the victims of gross violations.

53. Ms. PARKER (Sierra Club Legal Defense Fund) said that, since its foundation in 1971, her organization had provided the highest quality legal representation, without charge, to groups seeking to protect global, regional, national and local resources.

54. All countries were currently confronted with at least some problems involving human rights and the environment. In the United States, the issues had become so important to society as a whole that environmental policy had become a major feature of current national political campaigns. In developing countries the issues of the environment and human rights might well overshadow all other human rights concerns as they encompassed the right to housing; poverty and human rights; the right to development; environmental refugees; and life and health concerns.

55. The Legal Defense Fund had always stressed the importance of the broadest possible involvement in defining and implementing environmental policy. The experience of countries that had developed or were seeking to develop sound environmental policies could be useful to the Special Rapporteur on human rights and the environment and her organization would encourage countries to provide her with information regarding both process and implementation. Popular participation had been heavily emphasized in the Rio Declaration, especially in Principle 10 requiring States to provide access to and participation in decision-making processes, in Principle 20 emphasizing the essential participation of women, and in Principle 22 stressing the role of indigenous peoples and their communities.

56. Principle 10 had also mandated appropriate access to information and was strongly endorsed by her organization. Affirmative evaluation and disclosure included the preparation and dissemination of environmental and human impact studies prior to, during and after large-scale projects. Even small projects might require affirmative disclosure of information such as when housing was contemplated on former dumping sites of hazardous materials. Her organization also welcomed the mandating in Principle 10 of effective access to judicial and administrative proceedings, including redress and remedy. On the issue of effective redress in the context of human rights and the environment, her organization had noted that the International Court of Justice, in its decision on Military and Paramilitary Activities In and Against Nicaragua of 27 June 1986, had ordered reparations for material damage to property arising from acts of violated international law.

57. The Sierra Club Legal Defense Fund had stressed the necessity for anticipatory remedies such as injunctions and restraining orders in order to promote and protect environmental human rights in certain circumstances and noted that Mrs. Ksentini, Mr. Al-Khasawneh and others had also raised that issue. Such remedies were available in many other contexts. The Sierra Club Legal Defense Fund had noted the practice of the Special Rapporteur on summary

and arbitrary executions in his efforts to prevent threatened executions. Anticipatory remedies had also been invoked by the Human Rights Committee and by the Committee on Economic, Social and Cultural Rights. Further elaboration of that topic by the Special Rapporteur on compensation would be useful.

58. The Sierra Club Legal Defense Fund had noted the increasing attention in regional forums paid to human rights concerns about the environment in particular the transboundary effect of certain environmental problems. Regional approaches were essential because it was increasingly difficult to address environmental problems in isolation. Africa, North and Latin America, Europe and regions of Africa and Western Asia had all begun to address such issues regionally. There was little information, however, about regional approaches in South and East Asia and the Pacific Basin.

59. Her organization welcomed the attention paid by the Special Rapporteur on human rights and the environment to concerns presented to her by persons and groups from all over the world including meetings sponsored by the Sierra Club Legal Defense Fund. The Fund looked forward to further work with the Special Rapporteur.

60. Ms. NOLAND (International Association of Educators for World Peace) said that she spoke as a woman who was deaf. Unique to her deafness was that she could articulate for herself. Many deaf people were also speech impaired. Often, because they could articulate or speak, it was assumed that they could "hear a little" or read lips better than they really could and therefore did not need a sign-language interpreter. That was not true, and she routinely used a sign-language interpreter so that she could fully communicate, but had not been able to afford to bring one with her. It was to be hoped that one day, sign-language interpreters would be just as available as language interpreters, allowing people who were deaf to participate fully. She sought the support of the Sub-Commission in making that a reality.

61. Regarding the issue of human rights and HIV-infected people or people with AIDS, she applauded the work of the World Health Organization (WHO) and the positive efforts in many countries to begin eliminating discrimination against those who had AIDS. She supported the recommendations made by the Special Rapporteur in the report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1992/10).

62. She welcomed the efforts of the Sub-Commission and of the Commission on Human Rights to promote awareness for the human rights of disabled people worldwide. Currently, 500 million people had disabilities, without distinction of race, ethnic group, sex, religion, age or social origins. HIV and AIDS did not discriminate either, and there was no question that AIDS was disabling.

63. It had been pointed out that HIV-infected persons were driven underground, where they did not receive education, counselling or care. Yet there were millions of disabled people who were already isolated because of their disabilities and who in too many cases were already deprived of education, counselling and care. The strategies for preventing AIDS-related discrimination and for educating and empowering people worldwide to take on responsibility for their own health must include reaching everyone with that vital information. Although surely there was general agreement that disabled

people should benefit from such services, there was a tendency to forget about persons who could not see the written or hear the spoken word. Many people who were deaf and infected with the AIDS virus did not have any means of communicating, assuming they knew where to seek help at all. Moreover, providers of service did not make interpreters available and did not know where to find them. There was a lack of materials (Braille, large print, audio tapes or computer disks) for people who were blind or visually impaired. Access to the written and spoken word was a human right. That must begin in the Sub-Commission, which must provide sign-language interpreters and written materials in alternative formats for persons who were blind.

64. The Sub-Commission must participate in the strategies and programmes to combat HIV and AIDS. The international community must send a message of inclusion, not segregation, and the Sub-Commission must address the question of people with disabilities in connection with every human rights issue before it.

65. Mr. Alfonso Martínez resumed the Chair.

66. Mr. CROOK (Observer for the United States of America), speaking on the final report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9), and in particular on the conclusions and recommendations contained in document E/CN.4/Sub.2/1992/9/Add.1, said that with all due respect for the scholarship and dedication of the Special Rapporteurs, he disagreed with much that was in the addendum.

67. The United States regarded unfettered freedom of expression and freedom of the press as crucial instruments for attaining and maintaining other freedoms. The recent experiences of many countries casting off old tyrannies and struggling to build new, free institutions reconfirmed the power of free expression and a free press.

68. As was aptly emphasized in the 1990 Declaration of Windhoek, consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press was essential to the development and maintenance of democracy in a nation, and for economic development. The Declaration also stressed that the worldwide trend towards democracy and freedom of information and expression was a fundamental contribution to the fulfilment of human aspirations.

69. Those freedoms were given special protection by the First Amendment of the United States Constitution and by the courts. The United States subscribed fully to article 19 of the Universal Declaration and was deeply sceptical of other international texts, including the provisions in the International Covenant on Civil and Political Rights, which sanctioned potentially extensive controls on free expression and the press.

70. The danger was that free expression and a free press could so easily be choked by the State. States wishing to avoid criticism and to stifle dissent and to protect their power tended to exploit all available means to do so. Accordingly, his delegation opposed any provisions that would seem to condone State control over freedom of expression and the press. Such control was

prone to enlargement and abuse by the State. It was thus fundamentally incompatible with the continued exercise of the rights of free expression and a free press. It detracted from, rather than promoted, general welfare in a democratic society.

71. Neither the work of the Sub-Commission nor of any other United Nations body should give sanction or credence for controls on free expression and a free press. That was a key point on which his delegation seemed to part company with the authors of the report, who started with the premise that controls on expression and the press were sometimes justified and then posited and refined an international framework for determining the extent of allowable controls.

72. In the view of his delegation, that was not how the problem should be approached. The Sub-Commission should denounce and combat State controls on expression and the press, not provide the blueprint for their enactment.

73. In conclusions 1, 2 and 3, the report seemed to suggest a hierarchy of rights. It implied that freedom of expression and the press were somehow of a lesser character, properly subject to derogation or limitation. His delegation did not agree. Freedom of expression and of the press were fundamental to the creation and functioning of a healthy society. They could not be less protected than other rights, for without them, no other rights could be assured.

74. Some of the situations cited in the conclusions showed the hazards that arose when Governments were allowed to open the door to controls on expression and the press. The conclusions spoke of the criminal conviction and even persecution of journalists. But that could only occur where Governments were allowed to sanction people for what they wrote or said.

75. The conclusions also referred to new laws enacted to curb xenophobia and racism, and new criminal sanctions on the dissemination of unpopular and ugly ideas. But, as it also rightly warned, there was a grave risk that such cures might be far worse than the evil they aimed to cure. The history of the United States and of many other countries had many examples of wrongs and excesses inflicted when the State had sought to legislate away unpopular expression of opinions. The Conclusions in addendum 1 urged that restrictions be interpreted and applied restrictively. But that only lent support to the existence of controls in the first place.

76. For those reasons, his delegation did not believe that the Sub-Commission should undertake further work to develop standards for the so-called "admissible" restrictions or a system of "restrictions on restrictions". Any such system was too prone to abuse. Indeed, contacts with concerned journalists about that report suggested that many responsible organizations would be reluctant to enter into any such activity. Instead of focusing on restrictions that might be imposed, the Sub-Commission should focus on positive statements of the rights it supported. In that regard, the Charter for a Free Press developed by a number of journalistic groups set out useful guidelines for the realization of freedom of the press. Realization of rights, rather than their limitations, should be the Sub-Commission's goal.

77. In closing, his delegation noted one recommendation which it believed warranted further reflection: the creation of a special rapporteur or working group aimed at providing safeguards for professionals in the field of information. That idea might be too narrow in scope, but it contained interesting possibilities for a broader mechanism for protecting all persons persecuted or punished because of the exercise of the rights enumerated in article 19 of the Universal Declaration. Such a mechanism would be a worthy addition to existing United Nations mechanisms and would enjoy his delegation's support.

78. Mr. AIZAWA (Observer for Japan) said that he wished to reply to statements by the World Council of Churches and Liberation, which had referred to the so-called "comfort women" during the Second World War. Japan's view was the same as stated in its reply under item 16. The question of claims for retained wages, savings or deposits of Korean workers to which the World Council of Churches and Liberation had referred had been completely and definitely resolved by the agreement on the settlement of problems concerning property and claims and on economic cooperation between Japan and the Republic of Korea, signed on 27 June 1965.

79. Mr. ERKMENOGLU (Observer for Turkey), referring to the paper distributed by the non-governmental organization Article 19: The International Centre against Censorship, said that, like that NGO, Turkey regretted the killing of so-called journalists or others by terrorist groups.

80. Nevertheless, to put the record straight, it must be said that most of those killed had not been real journalists but militants engaged in activities in defence of terrorist violence. Needless to say, that did not justify murder. Turkey was therefore doing its utmost to bring those responsible to justice.

81. But violence bred violence, and one terrorist group gave birth to another. The casualties due to terrorism had risen to 4,000 in eight years, more than half of them civilians. The nature of terrorism made it difficult and time-consuming to investigate each case and find those responsible.

82. As for freedom of opinion and expression in Turkey, if the NGO in question had read the Turkish newspapers and weeklies it had mentioned it would have realized that they all enjoyed freedom to such an extent as to be able to defend terrorist violence in a democratic country. He challenged the NGO to cite an example in which freedom of expression was as unlimited.

83. His delegation believed that NGOs could employ themselves more usefully than by supporting terrorism, and the NGO in question would also do well to read articles 19 and 30 of the Universal Declaration of Human Rights.

84. With regard to indemnity for inquiry to personal dignity, the amounts charged by the courts were much lower in Turkey than most Western countries.

85. The CHAIRMAN said that the Sub-Commission had concluded its debate on agenda item 4.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)
(E/CN.4/Sub.2/1992/3 and Add.1; E/CN.4/Sub.2/1991/16; E/CN.4/1992/46)

86. Mr. HATANO (Japan), speaking as a member of the Working Group on the methods of work of the Sub-Commission, referred to the application of the new guidelines and the Sub-Commission's continuing efforts to improve them.

87. Concerning the opening time of meetings, the new guidelines in draft resolution E/CN.4/Sub.2/1992/L.15 contained a number of provisions that simply codified the "established practice" of the Sub-Commission. Yet some of those practices would not appear to be so "established" after all. For example, Guideline No. 13 had stated that in accordance with established practice, meetings were to be begin at the scheduled time. Clearly, that was not the "established" practice. None of the meetings over the past three weeks had began at the scheduled time. Furthermore, it might be common knowledge among the older members of the Sub-Commission, but the newer members certainly were not aware of any such "established practice". He himself usually came to the conference room before 10 a.m., but he had never thought of asking the Chairman to open a meeting on time, since he had assumed that the Chairman could not do so without a quorum, and he was certain that that had also been the understanding of other newer members of the Sub-Commission. But, in fact, according to the established practice embodied in Guideline No. 13, meetings had to be opened at the scheduled time. In other words, the Chairman was obliged to start the meetings on schedule.

88. He was aware that the Chairman might be personally occupied with urgent issues beyond his control, but the Sub-Commission had also elected three Vice-Chairmen for the purpose of replacing the Chairman, and it was highly inconceivable that none of them was available to open a meeting at the scheduled time. In view of the above, he suggested that the Sub-Commission should establish the practice of opening its meetings strictly at the scheduled time, beginning with the next session.

89. Turning to Guideline No. 16 on speaking time, it had been a practice, whether established or not, that the Chairman did not start exercising his prerogatives with regard to the speaking time and that the self-discipline on the part of the members did not begin functioning until a rather late stage, and it had therefore often happened that towards the end of the session, even members were allowed to speak for no more than seven or eight minutes. Those agenda items upon which he wished to speak were usually scheduled for the second half of the session, and in order to make full use of the time-limit for members, he had therefore made it a rule to refrain from asking for the floor at an early stage, taking into account the fair and reasonable allocation of time as a whole to each member of the Sub-Commission. Nevertheless, the strict observance of the time-limit of seven or eight minutes was applied to all members, regardless of whether they had already spoken a lot or not. That seemed to be a little unfair and unreasonable. He therefore strongly appealed to the Sub-Commission to instruct the Chairman for the next session strictly to observe the speaking time from the very outset of the session, even if it meant interrupting statements.

90. If the Sub-Commission opened its meetings at the scheduled time and respected the speaking time throughout the session, there would be little need for extended sessions. The Sub-Commission should, of course, be ready to have an extended or night session in case of an emergency, but when extra meetings could be avoided by the self-discipline of its members and by the strict imposition of the time-limit by the Chairman, the Sub-Commission should refrain from requesting such meetings, which were usually inconvenient and tiring to all participants, including United Nations staff members. It was paradoxical that, by holding such extra meetings, a human rights body like the Sub-Commission might well be violating the fundamental human rights of those involved in its work.

91. Turning to the question of the Sub-Commission's continued efforts to improve the guidelines by amending the existing rules of procedure, he did not intend to reopen the debate on the text, upon which agreement had already been reached. As clearly stated in the report, the Working Group had been authorized by Commission on Human Rights resolution 1992/66 to make recommendations, but only without calling into question the rules of procedure of the functional commissions of the Economic and Social Council. Admittedly, the amendments to those rules of procedure fell exclusively within the jurisdiction of ECOSOC, but that did not necessarily mean that the functional commissions and their subordinate organs were categorically forbidden even to propose any amendments to ECOSOC. That was particularly so in the case of the Sub-Commission, which was composed not of representatives of Governments, but of independent experts, since there were some rules which were not literally applicable, as they stood, to the Sub-Commission or which were insufficient in clarifying the Sub-Commission's established practice. As an example, he cited rule 15, which read as follows: "At the commencement of its first meeting of a regular session the commission shall elect, from among the representatives of its members, a Chairman, one or more Vice-Chairmen and such other officers as may be required". It was in accordance with that rule that the current Chairman and other officers had been elected. But rule 15 was neither applicable in stricto senso to the Sub-Commission, nor was it sufficient for it in various points. The word "commission" should be replaced by "Sub-Commission"; the words "the representatives of" must be deleted; in order to specify the Sub-Commission's established practice, the term "one or more Vice-Chairmen" should be amended to read "three Vice-Chairmen" or perhaps "three Vice-Chairpersons"; for the same reason, the words "and such other officers as may be required" should be replaced by "a Rapporteur". Those were all points which were not literally applicable as such to the Sub-Commission. Furthermore, the current rules of procedure of the functional commissions lacked a number of precise provisions that were indispensable to the newer members. For example, it should be stated how the Chairman was elected, whether in rotation from each of the five regional groups and in what order. If he was not mistaken, starting with 1992 the order was Latin America, Asia, Africa, Eastern Europe and Western Europe. It was his understanding that with the appointing of rapporteurs, rotation was not in the same order, but rather, starting again with 1992: Western Europe, Eastern Europe, Asia, Latin America and Africa. Apparently, those "orders" had been known only to the older members of the Sub-Commission and the older staff of the Centre for Human Rights, because to his knowledge, such information had not been available in written form, unless the recent annual reports of the Sub-Commission were

consulted. In essence, the Sub-Commission was a "closed society". That was undesirable, and accordingly, such information must be clarified in guidelines accessible to all.

92. Furthermore, some precedents did not deserve the name of "an established practice", for example the question of whether the name of a member that a regional group had agreed to nominate as Chairman for the following session should be publicly announced at the end of a given session and what steps should be taken when a regional group failed to reach unanimous agreement when nominating a Chairman. In order to avoid confusion and unnecessary delay, such points should also be clearly set out in the Sub-Commission's guidelines.

93. In addition, the Sub-Commission might perhaps reconsider the present geographical distribution having five groups, since the East-West bipolarization had come to an end. He was fully aware that the existing distribution reflected that of the Security Council but the Sub-Commission had a good opportunity of showing its independence and uniqueness by merging the eastern and western European groups into a single group and by allotting it a new number of members.

94. Those were some, but not all, of the reasons why he insisted on continuing the effort to supplement the guidelines by amending the existing rules of procedure, subject, of course, to the approval of the Sub-Commission's parent bodies.

95. Turning to the text reproduced in document E/CN.4/Sub.2/1992/L.15, he drew attention to the need to maintain uniformity in the order of words. He suggested that the words "decisions or resolutions" in Guidelines Nos. 8 and 13 be changed to "resolutions or decisions", and that the words "a consensus and solemn declaration" in Guideline No. 11 be re-ordered to read "a solemn and consensus declaration". Guidelines Nos. 9-12 referred only to "resolutions" while Guideline No. 8 mentioned both "resolutions and decisions"; therefore the words "and decisions" should be added after the word "resolutions" in Guidelines Nos. 9-12.

96. Since Guidelines Nos. 8-12 had no titles, he suggested that the following headings should be used: for Guideline No. 8, "Number of resolutions and decisions"; for Guideline No. 9, "Self-discipline regarding the number of resolutions and decisions"; for Guideline No. 10, "Co-sponsors of resolutions and decisions"; for Guideline No. 11 "Consultations by the Chairman"; and for Guideline No. 12, "Deadline for the submission of draft resolutions and decisions".

97. Ms. ACTIS (American Association of Jurists), speaking on behalf of her own organization (AAJ), the International League for the Rights and Liberation of Peoples, Service Peace and Justice in Latin America, Centre Europe-Tiers Monde and the Latin American Federation of Associations of Relatives of Disappeared Detainees, said that it was necessary to restructure the agenda and the suggestions made in document E/CN.4/Sub.2/1992/3 were appropriate for that purpose. Nevertheless, there were certain imbalances in the items, partial approaches and some important omissions.

98. Sub-item 6 of item II on prevention of discrimination against children, youth and women (including traditional practices) was not receiving the attention it deserved, since women and children constituted the majority of the human race and faced enormous problems. That topic should be made a separate item. The isolated reference to "traditional practices" was not justified. Traditional practices were important, but no more so than discrimination against women in matters of wages, working hours, promotion, and social and family oppression. Sub-item 9 of item II (Discrimination against HIV-infected people or people with AIDS) formed part of a much larger problem which should include discrimination against persons suffering from other diseases as well.

99. The items on the right to a fair trial and the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers should be merged and given all their due importance. Sub-item 3 of item IV would appear to indicate that the right to freedom of opinion and expression were specific rights of certain professional categories such as journalists and United Nations officials, whereas in reality they were fundamental rights of all human beings. That would have to be corrected. Finally, there were two important omissions - representative democracy and popular participation. Those topics ought to be under permanent study by the Sub-Commission. Representative democracy was continually suffering from the trend to concentrate power for the sake of alleged administrative efficiency, and popular participation was an ideal that was far from being attained.

100. The strengthening of the independence of the Sub-Commission's experts had hardly been touched upon in the Working Group's report. The section devoted to it was largely concerned with the privileges and immunities of the experts and their safety; it was only distantly related to their independence. That independence had been mentioned in several resolutions, and Karel Vasak, in his book on the international dimensions of human rights, when referring to the members of the ILO Committee of Experts on the Application of Conventions and Recommendations, had stressed that independence was the key to success and that experts should not hold a national post binding them closely to the administration of the State. Unfortunately, the Working Group had not endorsed that view in its report. AAJ therefore reiterated in the Sub-Commission the suggestion which it had made to the Commission in document E/CN.4/1991/NGO/18 - namely that a resolution should be adopted establishing an incompatibility between being an expert member of the Sub-Commission and holding government office, including office in the diplomatic service. No incompatibility would exist as far as judges, members of parliament, teachers or research workers were concerned.

101. The non-governmental organizations on whose behalf she was speaking had been greatly impressed by the sensitivity and speed displayed by the Sub-Commission and the Commission on Human Rights in reacting to the dramatic situation in Yugoslavia. They hoped that such rapid reactions in defence of human rights would not be selective and that they would continue to be made in relation to other equally serious situations in other parts of the world, such as Afghanistan, Somalia, East Timor and Kurdistan. Speed, however, did not mean precipitation. For example, the text on the situation in Yugoslavia had required several hours of serene reflection. It was to be hoped that

Governments would take other initiatives like the one that had led to the convening of the special session of the Commission without waiting for the run-up to an election in their respective countries.

102. The special session of the Commission and the implementation of its decisions had had substantial financial implications. It was to be hoped that the Government of the United States of America, which had taken the initiative in the matter, would help to solve the serious financial problems currently afflicting the United Nations by paying off its debt to the Organization, which on 30 April 1992 had amounted to US$ 555 million.

103. Mr. ACTAN (Observer for Turkey) referred to operative paragraph 10 of Commission on Human Rights resolution 1992/66, which invited the Sub-Commission to continue to give due regard to new developments in the field of human rights. He was aware that the members of the Sub-Commission had always given weight to new developments, but the very magnitude of those developments warranted a review of the general approach to human rights.

104. The United Nations human rights system had taken shape in the aftermath of the Second World War and had developed in the ensuing cold war conditions. It therefore reflected the imprint of a global compromise between the two poles of the international system. As a result, democracy, democratization, democratic rights and freedoms and democratic institutions had not found enough expression in international standards and instruments. An impression had been created that human rights and freedoms could be promoted and protected outside the democratic framework.

105. Western countries had taken care of their own concerns for human rights within the Council of Europe. Upon the collapse of the Soviet empire, the former Communist countries of Eurasia had developed an elaborate democratic framework within the Conference on Security and Cooperation in Europe (CSCE), in cooperation with their Western partners. Thus, for those two groups of countries, the importance of the United Nations human rights system had greatly declined. What was left to it in practice was monitoring mainly the human rights situations in developing countries.

106. Most of the activities of the United Nations human rights system were related to alleged violations committed by security forces and the failure of the judiciary to meet international standards in developing countries in their struggle against terrorist violence.

107. Nevertheless, unlike what happened in the CSCE, terrorism was not treated by the United Nations as a human rights violation but as an impediment to the enjoyment of human rights and freedoms. The absence of terrorist violence from the agenda resulted in the dissection of the organic unity of a social phenomenon that was not conducive to an understanding of the problem or to finding a solution to it. Under those circumstances, terrorist violence and alleged human rights violations continuously spiralled despite severe international criticism of the latter in human rights circles.

108. The impasse arose also from the fact that democracy was not embodied in international standards in the United Nations system, but countries without democratic regimes seemed to be considered as tyrannical and oppressive and the use of violence against them was justified as a last resort.

109. Non-governmental organizations, in a legalistic approach, might limit their concerns to violations committed by Governments while neglecting terrorist violence. States, however, for their survival were primarily interested in terrorist violence, whose continuation could bring about the collapse of the political order and a return to a "state of nature" where savage violence spared no one. The view of the NGOs that respect by States for human rights together with the rule of law in their struggle against terrorist violence was the only remedy was morally correct but grossly inadequate from the sociological point of view.

110. Since the main focus in the United Nations system was on developing countries, it would be helpful to ascertain what the development process was. Development triggered off a massive population drift from rural to urban areas and entailed the politicization of society. It destroyed customs, traditions and beliefs. Class and regional imbalances reached great proportions. Development was an extremely unstable, even destabilizing, process in which large segments of the population suffered from unemployment, culture shock, maladaptation, and socio-economic deprivation amid rising expectations. In that process State coercion became almost inevitable to keep economic expectations from outgrowing economic capacity and becoming violently ideological and to prevent discontent from sliding into fanaticism and fundamentalism or regional imbalances from turning into ethnic separatist aspirations.

111. In a developing country an authoritarian Government might have the consent of the people for some time, provided that a high rate of development benefiting the masses was achieved. In the medium term, however, no authoritarian Government could retain the backing of the people because of the rapid corrosive effects of the structural problems involved. That was where democracy came into the picture. Without democracy, neither could rapid change take place peacefully nor could there be changes of government without violence. A comprehensive development strategy should therefore embody the democratization process. He had no illusions about democracy, being fully aware that it was very difficult to establish, that it had many imperfections, that it did not automatically guarantee human rights and freedoms, especially ethnic ones, that it rendered economic management more difficult, and that it allowed centrifugal forces to make society more vulnerable to external pressures and interventions.

112. Consequently, a new approach should be elaborated, comprising the following points, in the United Nations human rights system with a view to helping countries to establish democracy.

113. First, the present approach seemed to aim at promoting democracy primarily through securing respect for individual human rights. That was mainly inspired by the historical experience of the Western countries. For countries which for various reasons had remained outside that Western development, the process should be reversed and priority should be given to the establishment of democratic institutions. Second, democratization was a long process and countries should be expected to engage in it and advance gradually, in a phased approach. Third, democratizing countries should be entitled to the moral, material and technical help of the international community. Fourth, terrorist violence should not only be condemned verbally.

It should be outlawed, denounced and fought jointly. It should never be justified for the acquisition of ethnic or ideological rights. That required a radical revision of NGO policies which condoned terrorism in general and ethnic violence in particular. NGOs should realise that political order was the essential prerequisite for democracy and for respect for human rights and that terrorist violence endangered the very basis of the political order and impaired efforts to move towards democracy. Fifth, the democratization of developing countries also required a profound revision of the foreign policies of industrialized countries. In the cold war both camps had encouraged ethnic groups for destabilization purposes. As a result, ethnic aspirations had swollen to such an extent that neither authoritarian nor democratic Governments could cope.

114. Democratization would make developing countries more vulnerable to covert and overt external interventions. Stronger countries should therefore refrain from manipulating the situation. After all, respect for human rights and freedoms could never be fully achieved if other countries pursued predatory foreign policy aims. In other words, the entire international relations framework should become normative. A partially normative approach did not stand any chance of success. It was hard to blame the Government of a country for committing violations while terrorist violence in its territory was being instigated, organized and supported by its neighbours and others.

115. Turkey was preparing to accede to the International Covenant on Civil and Political Rights, and as soon as it became a party it would propose a series of amendments with a view to incorporating democracy, democratic institutions, rights and freedoms in the Covenant as a protocol. He suggested that in the restructured agenda the Sub-Commission should include "Democracy and democratization" as a new sub-item 4 under item IV and "The elimination of terrorism", again under item IV, after "Preservation of international peace and security ...".

116. Mr. EIDE, commenting on the previous speaker's remarks, said that "terrorist violence" must be taken to mean the systematic use of acts of terror by Governments as well as by terrorists; in other words, the existence of terrorism could not be invoked to justify acts of terror by Governments. In any case, the previous statement should really have been made in the Commission on Human Rights rather than in the Sub-Commission.

117. Turning to the report of the Working Group (E/CN.4/Sub.2/1992/3), he said that many members of the Sub-Commission felt that they did not have enough time in which to do their work. Too many statements were made, some of them unnecessary. As far as speaking time was concerned, it would be necessary to ascertain in advance how many hours were available and to divide them up accordingly. Either some way must be found to limit the number of interventions made by non-members or more closed meetings must be held. The number of NGOs and government observers wishing to speak had escalated in recent years. One way to save time would be for those wishing to comment on progress reports to convey their views to the Special Rapporteur concerned, making their statements in public only when the final report was discussed. In any case, since there was no possibility of increasing the length of the session, ways must absolutely be found to reduce the amount of time spent on matters not strictly related to the Sub-Commission's work as a body of experts.

118. Mrs. WARZAZI endorsed Mr. Eide's comments. The Sub-Commission had changed considerably over the past 10 years. The increasingly large number of NGOs and government observers present was in some ways a sign of success, reflecting the interest taken in the Sub-Commission's work. Unfortunately, however, the essence of the Sub-Commission's role might be misunderstood. It now seemed more like a new Commission on Human Rights. When, 10 years previously, it had met in a much smaller room with just a few NGOs and government observers present, it had been able to make a proper study of the reports before it.

119. It would be wrong to limit members' speaking time too much. If NGOs continued to report violation of human rights at almost every juncture, the Sub-Commission would not be able to do its work satisfactorily. Therefore NGOs should exercise self-discipline in their statements and government observers when making statements equivalent to a right of reply, as well as members of the Sub-Commission themselves.

120. Mrs. PALLEY, speaking on a point of order, moved that, in order to enable the representatives of NGOs to make their statements on other agenda items at an early stage, the Sub-Commission should suspend further consideration of item 3 until either 11 p.m. or 10 a.m. on the following day.

121. After a brief procedural discussion in which Mr. GUISSE, Mr. BOSSUYT, Mrs. WARZAZI and the CHAIRMAN took part, the CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission wished to postpone further consideration of agenda item 3 until 11 p.m.

122. It was so decided.